A **DINESH KANAVAJI KANAWAGI & ANOR v. RAGUMAREN N GOPAL; BAR COUNCIL MALAYSIA (INTERVENER)**

COURT OF APPEAL, PUTRAJAYA
BALIA YUSOF WAHI FCJ
HAMID SULTAN ABU BACKER JCA
B BADARIAH SAHAMID JCA
[CIVIL APPEAL NO: W-02-1455-06-2013]
25 MAY 2016

C ***LEGAL PROFESSION:*** *Disciplinary proceedings – Disciplinary Board/Committee – Compensation for acquisition of ancestral land – Compensation monies paid out to legal firm – Legal firm failed to pay monies to proper beneficiaries – Complaint by another advocate and solicitor on behalf of beneficiaries – Advocates and solicitors involved in representation of beneficiaries struck off Rolls of Advocates and Solicitors – High Court affirmed findings of Disciplinary Board/Committee – Appeal against*
D *decision – Whether grounds of appeal technical in nature*

The appellants were advocates and partners of M/s Khana & Co. The respondent, also an advocate, was the complainant on behalf of one Saling Lau Bee Chiang, ('Saling') an orang asli from Kota Tinggi, Johor who was a beneficiary of the Lembah Linggui Trust Fund ('trust fund'). Khana & Co
E represented the orang asli beneficiaries in a claim regarding compensation for the acquisition of their ancestral land and obtained judgment against the Johor State Government. Subsequently, a total sum of RM38.5m ('the compensation monies') was paid out to Khana & Co as one of the trustees. However, the orang asli beneficiaries claimed that they did not
F receive the compensation monies and there was no financial information on it. The complaint was heard by the Advocates and Solicitors Disciplinary Board ('DB') and the appellants' names were struck out from the Rolls. The appellants then appealed separately to the High Court. The High Court sustained the decision of the DB. Hence, the present appeal. The grounds of
G appeal raised by the appellants, *inter alia*, were that (i) there was coram failure in the DB that struck off the appellants of the Rolls; (ii) the Disciplinary Committee ('DC') did not keep a record of the proceedings; (iii) the appellants could not be subjected to disciplinary proceedings for action of conduct not in the capacity as advocates and solicitors; and (iv) the complainant ought to be Saling and not the respondent.
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Held (dismissing appeal with costs)
Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) The appellants' grounds of appeal were technical in nature. The misconduct of the appellants was much more serious. There was no
I dispute as to the substance of the complaint. Technical non-compliance as a general rule where grave and serious misconduct has been established, will not assist the appellants to set aside the order of DB and only in a suitable case can the matter be remitted to the DC or DB for

a fresh hearing. Any reasonable tribunal appraised with the facts and the law can only come to one conclusion; that is to strike out the appellants from the Rolls. (paras 11 & 12)

(2) The trial judge had been correct in giving less weight to technical issues, when dealing with a grave serious allegation of misconduct by an advocate. The courts must ensure that the DB and DC have accorded procedural fairness to the advocate. As long as the procedural fairness is in place, technical breaches play a lesser role in disciplinary proceedings. It is well settled that as a general rule, the policy is not to interfere in matters of professional discipline, but to leave matters of discipline to the body entrusted by Parliament to regulate and discipline members of the profession. All that is required is that the disciplinary body acts fairly in carrying out its duties, and the hearing conducted thoroughly with due deliberation and understanding given to the facts of the complaint. (paras 14, 15 & 16)

Bahasa Malaysia *Translation*

Perayu-perayu merupakan peguam bela dan rakan kongsi Tetuan Khana & Co. Responden, seorang peguam bela, adalah pengadu bagi pihak Saling Lau Bee Chiang, orang asli dari Kota Tinggi, Johor, yang juga penerima Dana Amanah Lembah Linggui Valley ('dana amanah'). Khana & Co telah mewakili waris orang asli dalam tuntutan mengenai pampasan bagi pengambilan tanah nenek moyang mereka dan telah memperolehi perintah terhadap Kerajaan Negeri Johor dan kemudiannya, sejumlah RM38.5m ('wang pampasan') telah dibayar kepada Khana & Co sebagai salah satu pemegang amanah. Walau bagaimanapun, waris orang asli mendakwa mereka tidak menerima wang pampasan dan tidak ada maklumat kewangan mengenainya. Aduan tersebut didengar oleh Lembaga Tatatertib Peguam bela dan Peguam cara ('LT') dan nama perayu-perayu dibatalkan daripada Daftar. Perayu-perayu kemudiannya merayu secara berasingan kepada Mahkamah Tinggi. Mahkamah Tinggi mengekalkan keputusan LT. Oleh itu, rayuan ini. Alasan-alasan rayuan yang dikemukakan oleh perayu-perayu, antara lain, adalah bahawa (i) terdapat kegagalan korum dalam LT yang membatalkan nama perayu-perayu daripada Daftar; (ii) Jawatankuasa Tatatertib ('JT') gagal menyimpan rekod prosiding; (iii) perayu tidak boleh dikenakan tindakan disiplin terhadap tindakan yang bukan dalam kapasiti sebagai peguam bela dan peguam cara; dan (iv) pengadu sepatutnya adalah Saling dan bukan responden.

Diputuskan (menolak rayuan dengan kos)
Oleh Hamid Sultan Abu Backer HMR menyampaikan penghakiman mahkamah:

(1) Alasan-alasan rayuan perayu-perayu adalah bersifat teknikal. Salah laku perayu-perayu adalah lebih serius. Tiada pertikaian tentang intipati aduan. Ketidakpatuhan teknikal secara umum di mana salah laku besar dan serius dibuktikan, tidak akan membantu perayu untuk mengetepikan

perintah LT dan hanya dalam kes yang bersesuaian perkara tersebut boleh dikembalikan kepada LT atau JT untuk dibicarakan semula. Mana-mana tribunal munasabah yang mentaksirkan fakta kes dan undang-undang akan hanya boleh mencapai satu kesimpulan; iaitu membatalkan nama perayu-perayu daripada Daftar.

(2) Hakim bicara betul dalam memberi penilaian yang kurang kepada isu-isu teknikal, apabila berhadapan dengan dakwaan serius salah laku oleh seorang peguam bela. Mahkamah perlu memastikan bahawa LT dan JT telah memberi keadilan prosedur kepada peguam bela. Selagi keadilan prosedur diikuti, pelanggaran teknikal memainkan peranan yang kecil dalam prosiding disiplin. Adalah matan bahawa sebagai peraturan umum, polisinya adalah untuk tidak campur tangan dalam hal-hal disiplin profesional, tetapi untuk meninggalkan hal-hal disiplin kepada badan yang diamanahkan oleh Parlimen untuk mengawal selia dan mendisiplinkan ahli-ahli profesion tersebut. Apa yang diperlukan ialah bahawa badan disiplin bertindak adil dalam menjalankan tugasnya, dan pendengaran yang dijalankan secara menyeluruh dengan pertimbangan wajar diberikan kepada fakta aduan.

Case(s) referred to:

Chin Kek Shen v. PP [2013] 7 CLJ 435 CA ***(refd)***

Gana Muthusamy & Tetuan LM Ong & Co [1998] 4 CLJ 878 CA ***(refd)***

Jerald Allen Gomez v. Shencourt Sdn Bhd; Majlis Peguam (Intervenor) [2006] 1 CLJ 88 HC ***(refd)***

Law Society of Singapore v. Ravindra Samuel [1999] 1 SLR 696 ***(refd)***

Lembaga Jurutera Malaysia v. Leong Pui Kun [2008] 6 CLJ 93 FC ***(refd)***

Re a Solicitor [1936] 1 LNS 43 HC ***(refd)***

Re GH Conaghan [1960] 1 LNS 106 HC ***(refd)***

Legislation referred to:

Advocates and Solicitors (Disciplinary Enquiry) Procedure Rules 1970, r. 2

Legal Profession Act 1976, s. 94(3)

Legal Profession (Disciplinary Proceedings)(Investigating Tribunal and Disciplinary Committee) Rules 1994, rr. 2, 3(1), 24

Other source(s) referred to:

Janab's Key To Criminal Procedure, Evidence, Advocacy and Profession Ethics in Malaysia and Singapore, 1st edn, p 1173

For the appellants - Gopal Sri Ram, Shopna Rani Malakar & David Yii Hii Kiet; M/s Shopna Rani Malakar & Co

For the respondent - Prakash Menon, Iveen & Ragumaren N Gopal; M/s G Ragumaren & Co

For the intervener - Lambert Rasa-Ratnam & Hoi Jack S'ng; M/s Lee Hishammuddin Allen & Gledhill

[Editor's note: Appeal from High Court, Kuala Lumpur; Originating Motion Notice No: R2-17-45-07-2012 & R2-17-47-08-2012 (affirmed).]

Reported by Sandra Gabriel

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] The appellants' appeal in relation to the decision of the Advocates and Solicitors Disciplinary Board (DB) which struck them out of the Rolls of Advocates and Solicitors, which was sustained by the High Court came up for hearing on 10 September 2015. Upon hearing the appeal, we found no merits and dismissed the appeal. My learned brother Balia Yusof Haji Wahi JCA and sister Badariah Sahamid JCA have read the draft judgment and approved the same. This is our judgment.

Brief Facts

[2] Kanawagi is the father of Dinesh. Both of them were advocates and partners of M/s Khana & Co. The respondent who is also an advocate was the complainant in the disciplinary proceedings.

[3] The complaint was made by the respondent on behalf of one Saling bin Lau Bee Chiang, who is an Orang Asli from Kota Tinggi, Johor, a beneficiary of the Lembah Linggui Trust Fund.

[4] The complaint was related to a judgment which was obtained by the Orang Asli for the Johor State Government to pay compensation for acquisition of ancestral land. Khana & Co represented the Orang Asli and RM38.5 million was paid out to Khana & Co.

[5] In 2005, the respondent was appointed by the Orang Asli as they alleged that they did not receive correct financial information from the trustees that included Kanawagi with regards to the compensation monies. A suit was filed against Kanawagi and Khana & Co; wherein His Lordship Vernon Ong Lam Kiat JC (as he then was) allowed interim relief for the Orang Asli that included a suspension of Kanawagi as a trustee, restraining the defendants from dissipating the assets and to appoint a receiver and manager to manage the trust and investigate matters relating to the compensation monies. The learned judge in the interlocutory application had observed:

> All the above points to the mismanagement of the trust by the defendants. There is a lack of accountability and proper keeping of records. It appears that the trust has been run without any proper supervision and control. The situation is clearly undesirable as the trustees of a trust are acting in a fiduciary capacity. The conduct of the defendants in refusing to cooperate with the court appointed R&M is inexcusable. The trust is for the benefit of all the beneficiaries. In discharging their duties as trustees the defendants are bound by the high standards of duty of care. Plainly, this is not the case. They have engaged in self-dealing. On the whole of the evidence as adduced by the affidavits there is a real risk that the trust property is in jeopardy.

[6] This decision was confirmed at the Court of Appeal, and an appeal to the Federal Court was withdrawn at the eleventh hour.

[7] The complaint was heard by the DB and both appellants' names were struck out from the Rolls. Both appellants appealed separately to the High Court and both the appeals were consolidated in the High Court.

[8] The learned trial judge had written a comprehensive and speaking judgment. The grounds of the judgment can be summarised as follows:

(a) learned counsel for Dinesh argued that the court ought to reject all affidavits filed on the ground that, procedure-wise, they were defective as the appeal record had been filed and those affidavits were not part of the appeal record. The court held that parties cannot be stopped from exchanging affidavits. There is nothing in Act 166 (Legal Profession Act) which prohibits them from doing so.

(b) The appellants contended that the complainant ought to be Saling and not the respondent, and that a solicitor cannot step into the shoes of the complainant and testify. They complained that this was in breach of r. 2 of the Advocates and Solicitors (Disciplinary Enquiry) Procedure Rules 1970 (PU (A) 232/1970) and r. 2 of the Legal Profession (Disciplinary Proceedings)(Investigating Tribunal and Disciplinary Committee) Rules 1994 (PU (A) 189/1994). The court held that whether it is (PU (A) 232/1970) or (PU (A) 189/1994), the law does not prohibit the respondent from being the complainant and he is indeed the complainant for the purpose of r. 3(1) of (PU (A) 189/1994). The court further held that even (RU (A) 232/1970) refers to an advocate and solicitor who had made a complaint as a complainant.

(c) On the issue of whether the appellants can be subjected to disciplinary proceedings for action on conduct not in the capacity as advocate and solicitor, the court held that s. 94(3) of Act 166 states that the Disciplinary Board had power to strike off the roll of its member for misconduct in a professional capacity or otherwise. As advocates and solicitors, the appellants cannot divorce their position as such from their personal dealings. The court also held that the Disciplinary Board has a role to ensure and maintain public confidence in the trustworthiness of all members of the legal profession. The ethics of the profession applies to all members whether in their capacity as advocates and solicitors or not.

(d) The court found that the suggestion that the DC did not properly investigate the complaint was unfounded. The DC report showed that the DC's findings and recommendation were made after considering the arguments, the complaint and replies, the judgment of the learned JC, and the voluminous facts and exhibits.

[9] The appellants anchored the submission based on six grounds. It can be summarised as follows: A

(a) There was a coram failure in the DB that struck off the Appellants of the Rolls on 7.7.2012 in that there was no compliance of Section 93(4) LPA, 1976 (Act 166) read together with Section 93(3)(b) namely the President of the Malaysian Bar or any member of the Bar Council as his representative was absent from the meeting that took the decision thus rendering the decision a nullity. B

(b) DC which concluded the inquiry did not keep a record of the proceedings before it as required under Rule 24 of LP (DP) (IT& DC) Rules, 1994. C

(c) The DB/DC had no jurisdiction to register/set up and inquire into this complaint for the acts complained of were acts done by the Appellants not in their professional capacity or otherwise.

(d) The DC in coming to its conclusion relied on an interlocutory judgment by Vernon Ong JC (then) in JB High Court Suit No. 22-228-2009 (given on a burden of serious question to be tried) and which case is STILL on going. D

(e) The Complaint to the DB was made by the Respondent, an Advocate & Solicitor in his capacity as an Advocate & Solicitor for and on behalf of Sang Bin Lau Bee Chiang and during the DC hearing Saling was not present to give evidence or be subject to cross-examination and the DC permitted and accepted the Respondent to assume the role of the Complainant. E

(f) The High Court failed to apply its mind to the filing of an Affidavit by the Respondent in an appeal heard by the High Court from decision of the DB and which act was to put an uncertified Notes of Proceedings for the High Court to consider and which High Court did. F

[10] In the first instance, we note that the appellants' grounds of appeal were technical in nature when contrasted with the grave and serious complaint, which was supported by findings of court. There was also no G dispute as to the substance of the complaint. On the facts, any reasonable tribunal appraised with the facts and the law can only come to one conclusion; that is to strike out the appellants from the Rolls. This is so because of the strict provisions of the Legal Profession Act 1976 (LPA 1976) in particular s. 94(3). *Janab's Key To Criminal Procedure, Evidence, Advocacy* H *and Profession Ethics in Malaysia and Singapore* (1st edn) at p. 1173 had documented some of the views of eminent jurist on the subject of misconduct and reads as follows:

a. It cannot be said too strongly impressed on persons practising in any court of justice that lapses in conduct are looked upon in their case as more serious than lapses in the case of ordinary citizens. The standard which must be set and reached is a high one. I

b. ...

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c. ...

d. ...

e. If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct.

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f. Professional misconduct may consist in betraying the confidence of a client; in attempting by any means to practise a fraud or empower on or deceive the court or the adverse party or his counsel and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it.

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g. ...

h. It is settled general rule that an advocate cannot represent conflicting interests or undertake the discharge of inconsistent duties. When he has once been retained and has received the confidence of a client, he cannot accept a retainer from or enter the service of those whose interests are adverse to his client in the same controversy or in a matter so closely allied thereto as to be in effect a part thereof.

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Some useful cases will assist to demonstrate the acts, which may amount to breach of professional ethics, misconduct resulting in the lawyer being struck of the Rolls.

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[11] There are a number of cases where there was a finding of grave and serious misconduct that the court has struck out the advocate from the Rolls. To name a few are as follows:

(a) In *Re a Solicitor* [1936] 1 LNS 43; [1936] MLJ 192 it was held that where a solicitor has been convicted of actual dishonesty such as misappropriation of money to his own use he ought to be struck off the Rolls and not merely suspended. Holdings Whitely A-G CJ observed:

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It was thus clear that the solicitor had used for his own purposes money of his client which had come into his hands in his capacity as that client's solicitor and that he had been unable to pay over that money when requested so to do.

I

We were of opinion that conduct such as this constituted the most serious type of offence which a solicitor can commit in pursuance of his profession. The application of the Bar Committee was based upon section 25(1), (2)(a) and (2)(b) of the Advocates and Solicitors Ordinance. We were satisfied that due cause was shown why the solicitor should be struck off the roll under both of those subsections in that he had (a) been convicted of a criminal offence implying a defect of character which unfitted him for his profession and (b) been guilty of grossly improper conduct in the discharge of his professional' duty.

We were referred to a number of English decisions. From the judgment of Wills J in *Re a Solicitor*, [1894] 1 QB at p 259 it would appear that where a solicitor has been convicted of actual dishonesty in the shape of anything like misappropriation of money to his own use he ought to be struck off the Rolls but that where his professional misconduct does not amount to such dishonesty it may be sufficient punishment merely to order him to undergo suspension. The principle upon which punishment in such cases should proceed was also discussed in the judgments of the Court of Appeal in *Re a Solicitor*, 5 TLR 486. Lord Coleridge LCJ observed that "it could not be laid down [242] as an absolute rule that a conviction for felony must always cause a solicitor to be struck off the Rolls. The circumstances of each conviction must be considered by the Court. There were some felonies, no doubt, which were infinitely disgraceful; there were others which an honourable man might commit without suffering any stain to his honour. No doubt punishment must follow on every conviction, because the law must be vindicated; but it might well happen that a man who had been convicted of such a felony would not be unfit to associate with his fellowmen or to be trusted with their money or their confidence." LJ Lindley also protested against the proposition that whenever a solicitor was convicted for felony, he must, as a matter of course, be struck off the Rolls. He went on to say: "Instances might easily be given of felonies which would not justify such a course. Here, however, the felony was one affecting the trustworthiness of the solicitor, and if, when the matter first came before the Chief Justice and Mr Manisty J, he had been a member of the Court, he would have thought, on the facts, that the solicitor ought not to have remained on the Rolls." That was a case in which it appeared that the solicitor had applied various sums of money to his own use but when the first application to strike him off was made to the Divisional Court he had not been prosecuted and on his undertaking to make restitution he was merely suspended.

Whilst, however, being satisfied that this was a case in which we ought to order the solicitor to be struck off the roll we felt it proper to intimate that in our opinion this order should not preclude him under suitable circumstances and after the lapse of a suitable period from applying to the Court under section 26G of the Ordinance to have his name replaced on the roll. We made this intimation in view

A of (a) the youth and inexperience of the solicitor, (b) the fact that it was an isolated offence and (c) the fact that, before conviction, restitution had been made in full.

The solicitor had been called to the Bar in England but had never practised there nor read in the Chambers of any member of the Bar. On arriving in this Colony he had immediately set up in practice by himself as an advocate and solicitor of this Court without any previous experience in the office of any local firm of solicitors and without any knowledge of book-keeping or experience in the keeping of clients' account. In the judgment of the learned District Judge who tried the solicitor the following passage occurs: "I suspect that both Ng Poh Hok (the client) and accused were to some extent the cats paws of Lee Song Chua. I do not think accused planned deliberately to deprive Ng Poh Hok of his money and I have dealt leniently with him." It is unfortunately the fact that the solicitors of this Colony, owing to difficulties of language and especially if they themselves are inexperienced, are in many cases to an undesirably large extent at the mercy of and in the hands of their clerks. Lee Song Chua, the clerk of this solicitor, we were informed, has recently also been convicted of criminal misappropriation.

While we did not think that these considerations warranted us in making any order save an order that this solicitor be struck off the roll and while we in no way wished to prejudge any application for reinstatement that might eventually be made we felt this was a cause in which, if he is allowed to retain his qualification as a member of the Bar in England, it was not impossible that this solicitor might one day be readmitted to practise in this Colony.

In addition to the order striking him off the roll of this Court we made an order that the costs of the Bar Committee should be paid by the respondent.

(b) In *Re GH Conaghan* [1960] 1 LNS 106; [1961] MLJ 81 the respondent, in his capacity as a solicitor, received $14,000 from a third party for payment to a client. The sum received was not paid to the client but was knowingly applied by the respondent to other purposes.

The court held that what the respondent had done amounted to professional misconduct of the most serious character. Thomson CJ observed:

We are in no way concerned with the domestic arrangements of the firm of Conaghan, Wreford & Thornton for it is abundantly clear that the conduct of the business of that firm in Penang was under the sole control of the present respondent.

He, in his capacity as a solicitor and having control of the firm, received $14,000 from a third party for payment to a client for whom the firm was acting. It is equally clear that that money was not, and to this day has not been, paid to the client for whom it was received but has been knowingly applied to other purposes.

> That may or may not amount to fraud. It may or may not amount to dishonesty. It may or may not be capable of being described by the euphemism of "miscalculation" which has been used, but it certainly does amount to professional misconduct of the most serious character.
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> We have listened to a plea for leniency. I need hardly say we have given such weight as we possibly can to that plea. Nevertheless the fact remains that in all these cases there are three interests to be concerned. There is the interest of the solicitor; there is the interest of the legal profession as a whole; and there is the interest of the public. The legal profession occupies by law a privileged position. The continued existence of that position can only be justified if every individual member of the profession conforms to certain standards.
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> The present respondent has fallen far short of these standards. In consequence he has done harm not only to himself but also to his client and to his profession as a whole and to the public for in the modern world it is in the public interest that there should be a legal profession observing the highest possible standards of conduct.

[12] The misconduct of the appellants is much more serious than *Re a Solicitor* or *Re GH Conaghan* case which we mentioned earlier. When the facts are not in dispute, technical non-compliance as a general rule where grave and serious misconduct has been established, will not assist the appellants to set aside the order of DB and only in a suitable case can the matter be remitted to DC or DB for a fresh hearing.

[13] We have read the appeal record, the submissions of the parties and the submission of learned counsel Lambert Rasaratnam for the Bar Council. After giving much consideration to the submissions of all parties, we take the view that the appeal must be dismissed. Our reasons *inter alia* are as follows:

(a) On the first ground (a), relating to coram failure, a letter from DB dated 9 September 2015 in substance evidencing that there was no coram failure, by consent of parties was admitted as encl. 17. Learned counsel for the appellants was magnanimous in withdrawing the complaint.

(b) On the second ground (b), that the DC did not keep a record of proceedings under r. 24, has no merits. We were satisfied that there was sufficient compliance of r. 24.

(c) On the third ground (c), that act complaint of was not in their professional capacity and in consequence the DB/DC had no jurisdiction is devoid of merits and not supported by judicial decision. In addition, in the instant case, the acts complaint of were inextricably interwoven to the professional conduct, in their capacity as advocates.

(d) On the fourth ground (d), it was wrong for the DC to rely on the interlocutory judgment; we take the view that it is devoid of merits. The interlocutory judgment was related to the facts of the complaint and the

DC has taken a holistic approach in making its findings. In our view, the approach taken by the DC was correct in methodology as well as jurisprudence.

(e) The fifth ground (e), the complaint ought not be made by the advocate and Saling was not present for cross-examination on the facts of the case has no merits. The complaint in this case was supported by credible documents as well as findings of court and the basic facts which is essential for the DC to conduct the proceedings were not lacking and/or in dispute.

(f) The sixth ground (f), on filing of affidavits and placing the uncertified notes of proceedings was a technical issue and has no merits on the facts of the instant case.

[14] As we said earlier, all the issues raised by the appellants were technical in nature and the DC/DB as well as the learned trial judge had been correct in giving less weight to technical issues, when dealing with a grave serious allegation of misconduct by an advocate within the spirit and intent of s. 94(3) of the LPA 1976.

[15] When an advocate is confronted with an allegation of this nature, what is required of him is to satisfy the DC/DB as the case may be that the allegation has no merits or it is not misconduct justifying one to be struck off the Rolls, etc. What the DC and DB need to observe is to ensure that the law, rules and the concept of natural justice is not breached. The courts must ensure that the DC and DB have accorded procedural fairness to the advocate. As long as the procedural fairness is in place, technical breaches play a lesser role in disciplinary proceedings related to advocate. It is now well-established that even in criminal proceedings, the courts are not obliged to favour technical arguments when the substance of the complaint is glaringly obvious and there cannot be any doubt as to the guilt of the accused. The courts have taken the view that the interest of society also needs to be protected. In *Chin Kek Shen v. PP* [2013] 7 CLJ 435; [2013] 5 MLJ 827, Hamid Sultan Abu Backer JCA sitting with Apandi Ali JCA and Linton Albert JCA, had this to say:

> [16] The protection in art 5(1) which is supreme in nature is not afforded to the prosecution or plaintiffs or defendants in civil cases. The difference is like apple and orange and one should not read s 114(g) in a literal sense when it relates to the accused without considering not only the Federal Constitution but the criminal jurisprudence in common law jurisdiction which bend backwards to lean in favour of the accused as far as the justice of the case will allow (see *Woolmington v. Deputy Public Prosecutor* [1935] AC 462). The only caveat is that it is for the court to balance public interest as well as to ensure justice is not compromised to the detriment of the victim. In *Shahabuddin and another v. State of Assam* Cr A No 629 of 2010, the Supreme Court of India had this to say:

> Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. *The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge*. During the course of the trial, the learned President Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subserved. For truly attaining this object of a 'fair trial', the court should leave no stone unturned to do justice and protect the interests of the society as well. (emphasis added)

[16] It is well-settled that (a) as a general rule, the policy is not to interfere in matters of professional discipline, but to leave matters of discipline to the body entrusted by Parliament to regulate and discipline members of the profession – *Gana Muthusamy & Tetuan LM Ong & Co* [1998] 4 CLJ 878 CA; *Keith Sellar v. Lee Kwang* [1980] 2 MLJ 191 FC; (b) all that is required is that the disciplinary body acts fairly in carrying out its duties, and the hearing conducted thoroughly with due deliberation and understanding given to the facts of the complaint – *Jerald Allen Gomez v. Shencourt Sdn Bhd; Majlis Peguam (Intervenor)* [2006] 1 CLJ 88 HC [2006] 1 CLJ 88, HC; *Lembaga Jurutera Malaysia v. Leong Pui Kun* [2008] 6 CLJ 93; [2009] 2 MLJ 36, FC.

[17] In the instant case, we take the view it is beyond doubt that the appellants had gravely misconducted themselves. (See *Law Society of Singapore v. Ravindra Samuel* [1999] 1 SLR 696). We are satisfied that the DC and DB had acted fairly and properly.

[18] For reasons stated above, the appeal is dismissed with costs of RM50,000 to be paid to the respondent. Both the appellants are liable jointly and/or severally to pay the costs. No costs were ordered in respect of the intervener (Bar Council). Deposit to be refunded.

We hereby ordered so.